

<b>DISTRICT</b> 08	<b>COUNTY</b> San Bernardino	<b>ROUTE</b> 395	<b>POST MILE</b> 08-SBD-395 PM R4.0/11.2	<b>PROJECT ID</b> 0813000222 EA: 08-0F633
FEDERAL AID NUMBER 6507(034)			OWNER'S FILE NUMBER XXXXXX	
FEDERAL PARTICIPATION/FEDERALLY ELIGIBLE/ NEPA DOCUMENT On the project <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO On the Utilities <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				

**UTILITY AGREEMENT NO.** 25-1003274 **DATE** \_\_\_\_\_

The San Bernardino County Transportation Authority (SBCTA) is developing plans to relieve congestion and enhance the safety and operational efficiency of United States 395 (US-395). This project would widen US-395 from 2 lanes to 4 lanes, with a continuous median, for a distance of approximately 7 miles between I-15 and SR-18 (Palmdale Road).

and

**Name:** City of Hesperia

**ADDRESS:** 9700 Seventh Ave. Hesperia, CA 92345

hereinafter called "OWNER", owns and maintains  
**Water facilities on US-395 in the City of Hesperia**

within the limits of SBCTA's Project which requires relocation, and/or adjustment in order to accommodate SBCTA's Project. The facility(ies) to be relocated, and/or adjusted are more particularly described in Plan No. XXXXXX to accommodate SBCTA's project.

It is hereby mutually agreed that:

### **I. WORK TO BE DONE**

In accordance with Notice to Owner No. 395-COH01 dated x-xx-xxxx, Owner shall relocate, adjust, and/or remove water facilities on or along US-395 in the City of Hesperia. All work shall be performed substantially in accordance with Owner's plan No. XXXXXX consisting of XX sheets, a copy of which is on file in the SBCTA office at 1170 W 3rd St, San Bernardino, CA 92410.

Deviations from the OWNER's plan described above initiated by either SBCTA or OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by SBCTA and agreed to/acknowledged by OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

### **II. LIABILITY FOR WORK**

Existing facilities are located in their present position pursuant to rights superior to those of the SBCTA and will be relocated at 100% SBCTA's expense.

### **III. PERFORMANCE OF WORK**

OWNER agrees to perform the herein described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type,

and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.

Use of personnel requiring lodging and meal "per diem" expenses will not be allowed without prior written authorization by SBCTA's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per Diem expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines.

Work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements; but, work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

#### IV. PAYMENT FOR WORK

SBCTA shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

It is understood and agreed that SBCTA will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the SBCTA for the accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit detailed itemized progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by SBCTA of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

The OWNER shall submit a final bill to SBCTA within 360 days after the completion of the work described in Section I above. If SBCTA has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, and SBCTA has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements for OWNER's facilities (if required), SBCTA will provide written notification to OWNER of its intent to close its file within 30 days. OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If SBCTA processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, SBCTA shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by SBCTA. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNERS final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of SBCTA.

UTILITY AGREEMENT NO. 25-1003274

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit in accordance with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31 by SBCTA and/or Federal Auditors. In performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse SBCTA upon receipt of SBCTA billing. If OWNER is subject to repayment due to failure by SBCTA to comply with applicable laws, regulations, and ordinances, then SBCTA will ensure that OWNER is compensated for actual cost in performing work under this agreement.

OWNER, at the present time, does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$\_\_\_\_\_. SBCTA agrees to advance to OWNER the sum of \$\_\_\_\_\_ to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$\_\_\_\_\_ will be deposited by the SBCTA with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance.

It is further agreed that upon receipt of the monies agreed upon to be advanced by SBCTA herein, OWNER will deposit said monies in a separate interest-bearing account or trust fund in State or National Banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code, and all interest earned by said monies advanced by SBCTA and deposited as provided for above shall be credited to SBCTA.

In the event actual relocation and necessary costs as established herein are less than the sum of money advanced by SBCTA to OWNER, OWNER hereby agrees to refund to SBCTA the difference between said actual and necessary cost and the sum of money that was advanced. The remittance check for the balance of advanced funds will be separate from the remittance check for the earned interest. In the event that the actual and necessary cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, SBCTA will reimburse OWNER said excess costs upon receipt of an itemized bill as set forth herein.

## V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of SBCTA's request of **November 20, 2024**, to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If SBCTA's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, SBCTA will notify OWNER in writing, and SBCTA reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

All obligations of SBCTA under the terms of this Agreement are subject to the acceptance of the Agreement by SBCTA's Board of Directors or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission.

OWNER shall submit a Notice of Completion to the SBCTA within 30 days of the completion of the work described herein.

Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on LOCAL AGENCY highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.

It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.

UTILITY AGREEMENT NO. 25-1003274

In addition, the provisions of 23 CFR 635.410, BA, are also incorporated into this agreement. The BA requirements are further specified in Moving Ahead for Progress in the 21st Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.

OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance, and will demonstrate Buy America compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) mill test report (MTR). Certification(s) should state, "All manufacturing processes for these steel and iron materials, including the application of coatings have occurred in the United States. All manufacturing processes means melting of the steel through final manufacturing of steel components.

All documents obtained to demonstrate Buy America compliance will be held by the OWNER for a period of three (3) years from the date of final payment to the OWNER and will be made available to STATE or FHWA upon request.

One set of copies of all documents obtained to demonstrate Buy America compliance will be attached to, and submitted with, the final invoice.

This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013.

If, in connection with OWNER's performance of the Work hereunder, SBCTA provides to OWNER any materials that are subject to the Buy America Rule, SBCTA acknowledges and agrees that SBCTA shall be solely responsible for satisfying any and all requirements relative to the Buy America Rule concerning the materials thus provided (including, but not limited to, ensuring and certifying that said materials comply with the requirements of the Buy America Rule).

SBCTA further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, "Guidance") issued by Caltrans and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER's actions are in compliance with the Guidance.

THE ESTIMATED COST TO SBCTA FOR THE ABOVE DESCRIBED WORK IS **\$XX.XX**

**Signatures on following page.**

Page 5 of 5  
SBCTA Contract 25-1003274

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

OWNER:  
CITY OF HESPERIA

By \_\_\_\_\_ Date \_\_\_\_\_

By	Julianna K. Tillquist General Counsel	Date
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